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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MPA - 203543

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 19, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 8, 2021, by telephone.

The issue for determination is whether the agency correctly modified the PA request submitted on petitioner's behalf for personal care worker (PCW) services.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By:

Division of Medicaid Services  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner ([REDACTED]) is a 67 year old resident of Milwaukee County with a primary diagnosis of diabetes mellitus and a secondary diagnosis of neuralgia, neuritis and radiculitis.
2. Petitioner does not live alone.

3. On May 26, 2021, petitioner's provider [REDACTED] submitted a prior authorization (PA) request form requesting 133 personal care worker (PCW) units per week effective July 6, 2021.
4. On May 26, 2021, the provider submitted a Personal Care Screen Too (PCST) completed on May 11, 2021.
5. On June 18, 2021, the agency's nurse consultant requested a plan of care and the personal care addendum and PCW schedule and medical records to support the request for PCW services.
6. On August 11, 2021, the provider submitted Physician's orders/plan of care signed by the physician on August 3, 2021. The plan of care include valid certification dates of July 5, 2021 to July 6, 2022. Provider also submitted clinic notes from four dates between March and June 2021.
7. September 16, 2021 Agency approved with modification to 53 units per week (13.25 hours per week or 1.89 hours per day).
8. September 16, 2021, agency issued notice of appeal rights , stating that provider requested 7,154 units of PCW services per year and the agency approved only 2,475. because "the care requested can be provided during the visits approved."
9. On October 25, 2021, the Division received petitioner's request for fair hearing by U.S. Mail postmarked October 19, 2021.

### **DISCUSSION**

Medical assistance coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1) and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. The Code also provides that, "No more than one-third of the time spent by a personal care worker may be in performing housekeeping activities." Wis. Adm. Code, § DHS 107.112(3)(e).

In determining the number of PCW hours to authorize, the OIG uses the standard above along with the general medical necessity standard found at Wis. Adm. Code, § DHS 101.03(96m). Essentially the medical necessity standard requires a service to be basic and necessary for treatment of an illness, not necessarily the best service possible, and not just for convenience. To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. The PCST allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

In the case of PCW services, MA pays only for medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). Covered PCW services include only the following: Assistance with bathing; 2. Assistance with getting in and out of bed; 3. Teeth, mouth, denture and hair care; 4. Assistance with mobility and ambulation including use of walker, cane or crutches; 5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing; 6. Skin care excluding wound care; 7. Care of eyeglasses and hearing aids; 8. Assistance with dressing and undressing; 9. Toileting, including use and care of bedpan, urinal, commode or toilet; 10. Light cleaning in essential areas of the home used during personal care service activities; 11. Meal preparation, food purchasing and meal serving; 12. Simple transfers including bed to chair or wheelchair and reverse; and 13. Accompanying the recipient to obtain medical diagnosis and treatment.

Petitioner's daughter is his personal care worker. An issue that often arises where family members work as a personal care worker is that it is that he or she may take more time to do care than a skilled non-family member would, and thus the agency has set maximum times for typical care worker services.

In the present matter, the agency concedes that petitioner requires daily assistance with some Activities of Daily Living. Of the PCW time requested, only time for transferring and mobility were denied entirely and time for grooming, toileting and modification for behaviors was modified.

Regarding mobility, the agency denied the requested time because the PCST stated that only supervision, not physical assistance was needed. Supervision for mobility is not covered. PCW assistance is not medically necessary in this case because petitioner can ambulate in his home himself with an assistive device. Assistance with mobility outside the home is not covered. Similarly, regarding transfers, there was no clinical evidence to show that petitioner could not get in and out of bed unassisted with use of a cane. Transfers for bathing and toileting are included in those activities. There is no evidence that more assistance than that is needed.

The agency reduced grooming from 30 to 10 min a day for set up for grooming. It found no clinical evidence that petitioner is unable to complete grooming if it is set-up for him. The agency reduced toileting assistance from the requested four times per day to three times per day, reasoning that it gave petitioner the benefit of the doubt by exceeding the standard two times per day. The record contains no medical evidence of urinary problems, diarrhea or constipation that would support the provider's assertion that petitioner is incontinent of urine and stool or even that he had urgency with urination.

The provider requested additional time for behaviors up to the limit for someone living alone. The agency allowed time for behaviors but limited it to the time allowed for someone not living alone, because the personal care addendum stated that petitioner lived with family. Similarly, the agency allowed only 25 minutes for incidental services rather than the requested 33 because petitioner does not live alone.

It is petitioner's burden to establish the necessity of the requested time. At hearing, petitioner testified he cannot be alone and requires a caregiver come to his home a few hours per day. He mentioned neck pain as a reason he required more care. He also testified that he has kidney stones. His daughter [REDACTED] testified that he requires assistance preparing meals in the morning and evening and washing his clothes. Neither the two documents submitted by petitioner nor the testimony he presented established a need for additional assistance for mobility, transferring, toileting or grooming. Petitioner's PCW daily assignment schedule is evidence that the PCW spent 4.5 hours per day providing care but does not show that it was medically necessary or covered, based on the agency's criteria. The same goes for the July 28, 2020 Individualized Plan of Care that petitioner presented, signed by petitioner and his daughter.

Petitioner relies on the fact that he previously received significantly more PCW assistance than the agency is now allowing. It is noted that for 2018, 2019 and 2020, his PCW hours were approved based on clerical review, not clinical review. The past approvals are not a basis for approving the current requests without sufficient evidence of necessity based on the recent review of clinical records.

I am unable to determine that petitioner established that he is entitled to more time than allotted by the Department for any activity. Based on this record, I find that the agency's analysis of petitioner's needs is the most thorough and credible determination in the record. Petitioner has not established that the Department's determination, i.e., that the documentation reviewed by the Department establishes that the petitioner requires 53 units of personal care worker services per week was incorrect.

If the provider can show a medical need for more time, it may request an amendment for additional time with evidence to show the need for the additional time.

### **CONCLUSIONS OF LAW**

The respondent correctly modified petitioner's prior authorization request for PCW services.

**THEREFORE, it is**

**ORDERED**

That the petition for review is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

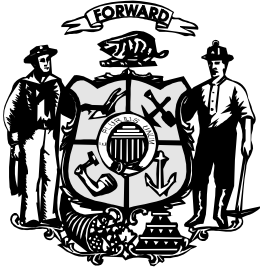
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 18th day of January, 2022

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Beth Whitaker  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 18, 2022.

Division of Medicaid Services